

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:13-00222

MICHAEL W. SMITH

PROBATION REVOCATION AND JUDGMENT ORDER
MEMORANDUM OPINION AND ORDER

On April 26, 2018, the United States of America appeared by Erik S. Goes, Assistant United States Attorney, and the defendant, Michael W. Smith, appeared in person and by his counsel, Gary A. Collias, for a hearing on the petition seeking revocation of probation, and amendment thereto, submitted by United States Probation Officer Douglas W. Smith. The defendant commenced a five-year term of probation in this action on May 7, 2014, as more fully set forth in the Judgment Including Sentence Under the Sentencing Reform Act entered by the court on June 4, 2014.

The court heard the admissions of the defendant and the representations and argument of counsel.

For reasons noted on the record of this proceeding, which are ORDERED incorporated herein by reference, the court found that the defendant has violated the conditions of supervised release in the following respects: (1) that the defendant used and possessed controlled substances as evidenced by a positive urine specimen submitted by him on October 11, 2017, for amphetamine, methamphetamine, cocaine, codeine and morphine, the defendant having also admitted to the probation officer that he nasally ingested Percocet and smoked methamphetamine; the defendant's admission to the probation officer on November 13, 2017, that he used Subutex without a valid prescription every couple of days, smoked methamphetamine four times in the previous month and used heroin prior to the October 11, 2017, urine screen; a positive urine specimen submitted by him on November 14, 2017, for buprenorphine, amphetamine, methamphetamine and morphine, the defendant having admitted to the probation officer that he used heroin and methamphetamine on November 11, 2017, and Subutex on November 13, 2017; a positive urine specimen submitted by him on December 19, 2017, for methamphetamine, the defendant having admitted to the probation officer that he used methamphetamine on December 17, 2017, and used Subutex without a valid prescription on December 18, 2017; a positive urine specimen submitted by him on

February 15, 2018, for amphetamine; a positive urine specimen submitted by him on March 8, 2018, for methamphetamine; and a positive urine specimen submitted by him on March 30, 2018, for methamphetamine, the defendant having admitted to the probation officer that he smoked methamphetamine on March 27, 2018; and (2) the defendant failed to attend urine collections and individual substance abuse treatment sessions as instructed for the months of October, November and December 2017, a treatment session on February 6, 2018, and urine collection on March 21, 2018; all as admitted by the defendant on the record of the hearing and as set forth in the petition seeking revocation of probation and the amendment thereto.

And the court finding, as more fully set forth on the record of the hearing, that the violations warrant revocation of probation and, further, that it would unduly depreciate the seriousness of the violations if probation were not revoked, it is ORDERED that the probation previously imposed upon the defendant in this action be, and it hereby is, revoked.

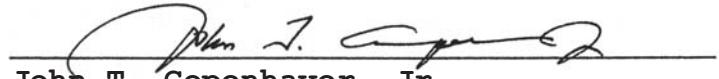
And the court having complied with the requirements of Rule 32(a)(1)(B) and (C) of the Federal Rules of Criminal Procedure, and finding, after considering the factors set forth in 18 U.S.C. § 3583(e), that the defendant should be confined to

the extent set forth below, it is accordingly ORDERED that the defendant be, and he hereby is, committed to the custody of the United States Bureau of Prisons for imprisonment for a period of TWO (2) MONTHS, to be followed by a term of three (3) years of supervised release upon the standard conditions of supervised release now in effect in this district as promulgated by the Administrative Office of the United States Courts (National Form AO 245B), the standard conditions as set forth in Local Rule 32.3 and the special condition that, for the first six months of supervised release, the defendant shall participate in intensive outpatient drug treatment and counseling as directed by the probation officer at Prestera or a similar organization. The restitution balance of \$5,559.60 is hereby reimposed.

The defendant was remanded to the custody of the United States Marshal.

The Clerk is directed to forward copies of this written opinion and order to the defendant, all counsel of record, the United States Probation Department, and the United States Marshal.

DATED: April 27, 2018


John T. Copenhaver, Jr.
United States District Judge